Supreme Court, U.S.
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NO.:_____

IN THE

SUPREME COURT OF THE UNITED STATES

INDUSTRIAL TECHNOLOGIES, INC.,

Petitioner,

vs.

CAPITAL ALLIANCE INSURANCE COMPANY, INC. and CAPITAL ASSURANCE COMPANY, INC.

Respondents.

On Petition For A Writ of Certiorari To The Supreme Court of the United States From Decision of the Supreme Court of Alabama

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PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the right to due process of law guaranteed to Industrial Technologies, Inc., by the Fourteenth Amendment to the United States Constitution was deprived when the Trial Court and the Alabama Supreme Court each issued no opinion decisions granting motions for summary judgment to two (2) insurance companies that Industrial had sued for breach of contract and bad faith.

2. Whether the no opinion decision granting summary judgment to said insurance company defendants was tantamount to the denial of a remedy to Industrial Technologies, Inc., and access to the courts contrary to the Fourteenth Amendment due process clause of the United States Constitution.

3. Whether the no opinion decision denying Industrial's claims is tantamount to the denial of Industrial's right to a jury trial remedy and of the right to an appeal remedy when each is enjoyed by all other persons in the State of Alabama alleging similar claims and similarly situated as to the facts of the Industrial Technologies claims, thereby violated the equal protection clause of the Fourteenth Amendment to the United States Constitution.

4. Whether the Trial Court's granting of Summary Judgment to two (2) insurance company defendants, coupled with the Alabama Supreme Court's application of Rule 53(a)(1) and 53(a)(2)(f), *Alabama Rules of Appellate Procedures* (the no opinion rules), constitutes, under the facts of the case, an impairment to the enforcement of the obligation of contract owed by Capital Alliance Insurance Company and Capital Assurance Company to Industrial Technologies, Inc., in violation of

the contract clause to the United States Constitution, Article I, Section 10, Clause 1.

PARTIES TO THE PROCEEDINGS

Petitioner: Industrial Technologies, Inc.

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Honorable Drayton Nabors, Jr.
Chief Justice
Supreme Court of Alabama
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Montgomery, Alabama 36104-3741

Honorable Benjamin A. Fuller
Circuit Judge
Nineteenth Judicial Circuit
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2. Amended Order of the Circuit Court of Autauga County, Alabama, dated February 12, 2004. A-3

3. Order of Affirmed - No Opinion issued by the Supreme Court of Alabama on December 17, 2004 A-4.

4. Order of the Supreme Court of Alabama dated February 11, 2005, overruling the Application for Rehearing A-5.

5. The entire Record on Appeal is sought to be brought before the Court.

6. 6-2-34, Code of Alabama, 1975. A-6

7. 10-2B-11.06, Code of Alabama, 1975 A-7

8. Rule 56, *Alabama Rules of Civil Procedure* A-8

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Industrial Technologies, Inc., an Alabama corporation, petitions this Court for a Writ of Certiorari to review a No Opinion Judgment and Order of the Supreme Court of Alabama, affirming a No Opinion Motion for Summary Judgment Order of the Circuit Court of Autauga County, Alabama, entered against it as being issued contrary to the due process and equal protection clause of the Fourteenth Amendment to the United States Constitution and Article I, Section 10, Clause 1 (the contract clause) of the United States Constitution.

JURISDICTION

The No Opinion Judgment of the Supreme Court of Alabama that adjudicated an issue presented under the Fourteenth Amendment due process and equal protection clauses of the United States Constitution and under Article I, Section 10, Clause 1 (the contract clause) of the United States Constitution was entered on December 17, 2004. A rehearing was sought in the Supreme Court of Alabama and denied on February 11, 2005. All orders of the Alabama Courts were issued without opinions and constitutes the substantial basis of the issues presented.

United States Supreme Court Rules 10(b), 10(c.)
Provisions for Jurisdiction are met under
28 U.S.C. § 1257
28 U.S.C. § 1207
28 U.S.C. § 2101

United States Constitutional Provisions Involved:

Amendment XIV

Fourteenth Amendment to the Constitution of the United States:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws."

Section 10.
[Restrictions upon Powers of States]

No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligations of contracts, or grant any title of nobility.

OPINIONS BELOW

1. The Order of the Circuit Court of Autauga County, Alabama, in the case of Industrial Technologies, et. al vs. Capital Alliance Ins. Co., et. al, CV-02-194-F granting the Summary Judgment Motions of Capital Alliance Insurance Co. and Capital Assurance Company, Inc. was not reported. The Order was dated January 26, 2004, and amended on February 12, 2004. Appendix A1-3.

2. The No Opinion Judgment of the Supreme Court of Alabama affirming the No Opinion Circuit Court of Autauga County, Alabama, Judgment granting the Motions for Summary Judgment as filed by Capital Alliance Insurance Co., Inc. and Capital Assurance Co., Inc., Case No. 1031438 is dated December 17, 2004, but is not yet reported. The No Opinion Judgment of Affirmance does not appear in the record, but appears at Appendix A-4.

3. The No Opinion Order of the Supreme Court of Alabama denying a rehearing to Petitioner Industrial Technologies, Inc. is dated February 11, 2005. The Order is not yet reported. The Order does not appear in the record but appears at Appendix A-5.

STATUTES INVOLVED

28 U.S.C. § 1257
28 U.S.C. § 1207
28 U.S.C. § 2101
Alabama Statutes:
6-2-34, Code of Alabama, 1975 - Appendix A-6
10-2B-11.06, Code of Alabama, 1975 - Appendix A-7
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Rule 9(c.)
Alabama Rules of Appellate Procedure, - Appendix A-10
Rule 53(a)(2)(c)
Alabama Rules of Appellate Procedure, - Appendix A-10
Rule 53(a)(2)(f)